REMARKS

The applicants have considered the Office action dated June 9, 2009, and the references it cites. By way of this response, claims 1, 7, 10, 17, 21, 26, 60, 72, 74, 76, 78, 80, 82, 95, 102 and 107-112 have been amended. It is respectfully submitted that all claims are fully supported by the originally-filed specification. No new matter has been added. In view of the foregoing amendments and the following remarks, it is respectfully submitted that the pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

Subject Matter Rejections

The Office action rejected independent claim 1 and the claims depending therefrom as being directed to non-statutory subject matter under 35 U.S.C. § 101. The applicants respectfully traverse these rejections.

Although presently under Supreme Court review, the current test for determining whether method claim 1 recites statutory subject matter is the machine-or-transformation test set forth by the Federal Circuit in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008). As noted in the Office action, *Bilski's* machine-or-transformation test provides that a method claim is statutory under 35 U.S.C. § 101 when the claim is either tied to a particular machine or transforms an article. (*Id.* at 961.) Additionally, *Bilski* explains that a patentable transformation of an article includes the transformation of something that is physical, as well as the transformation of data representing something that is physical. (*Id.* at 962-963, 964.)

Independent claim 1, as amended, recites a method to monitor presentation of video-on-demand (VOD) content comprising determining server metering data using a server metering device in communication with a VOD server, and determining subscriber metering data using a site metering device. This claim clearly meets the first prong of *Bilski's* machine-or-

transformation test because the method of claim 1 is tied to one or more particular machines. For example, the method of claim 1 is tied to the recited server metering device that is communicatively coupled to the recited VOD server. Additionally, the method of claim 1 is tied to the recited site metering device.

Furthermore, amended claim 1 recites "electronically combining the subscriber metering data and the server metering data." Electronically combining the subscriber metering data and the server metering data inherently requires using a particular machine to electronically combine the data, which is clearly not mere extra-solution activity in the context of claim 1.

For at least the foregoing reasons, claim 1 meets *Bilski's* machine-or-transformation test and, therefore, recites statutory subject matter. Accordingly, withdrawal of the rejections of independent claim 1 and the claims depending therefrom under 35 U.S.C. § 101 is respectfully requested.

Art Rejections: Claim 1

The Office action rejected independent claim 1 as being unpatentable over *Aras* (U.S. 5,872,588) in view of *Link* (U.S. 6,289,514) under 35 U.S.C. § 103(a). The applicants respectfully traverse this rejection.

Independent claim 1, as amended, recites a method comprising combining subscriber metering data and server metering data to monitor VOD content provided specifically to a first subscriber site, the subscriber metering data indicating whether VOD content was selected for presentation at the first subscriber site, and the server metering data identifying the VOD content provided by a VOD server specifically to the first subscriber site and also identifying the first subscriber site. The combination of *Aras* and *Link* fails to teach or suggest combining subscriber

metering data and server metering data to monitor VOD content provided specifically to a first subscriber site, as recited in amended claim 1.

The Office action found that *Aras* is "unclear" with respect to "combining the subscriber metering data and the server metering data to monitor the selected VOD content provided to the subscriber site." (See the Office action, p. 6.) In fact, *Aras* fails to teach or suggest combining subscriber metering data and server metering data to monitor VOD content provided specifically to a first subscriber site, as recited in amended claim 1.

Link describes a television programming analysis system (referred to as "TPAS"). In its rejection of claim 1, the Office action relies on the data asset viewership consolidator of *Link's* TPAS in an effort to overcome the deficiencies of *Aras* with respect to the recited combining of subscriber metering data and server metering data. As described in *Link*, "the asset viewership consolidator 214 combines the asset tag timestamp records 110 for the head end 301 with the [set-top box] STB aggregate data 109 to determine the consumer behavior with regards to individual assets." (See *Link*, 10:51-54.). However, *Link's* asset tag timestamp records contain timestamped asset codes for audio/video content broadcast generally to all consumers served by the head end 301. (See *Id.* at 6:18-40.)

Unlike the server metering data recited in claim 1, *Link* does not describe or even suggest that its asset tag timestamp records contain data identifying VOD content provided specifically to a first subscriber site. Moreover, unlike the server metering data recited in claim 1, *Link's* asset tag timestamp records do not contain subscriber identifying data, much less data identifying the first subscriber site to which the VOD content was provided. Therefore, *Link's* asset viewership consolidator does not combine subscriber metering data with server metering data as recited in claim 1 because the asset tag timestamp records processed by *Link's* asset viewership

consolidator contain neither data identifying VOD content provided specifically to a first subscriber site nor data identifying the first subscriber site to which the VOD content was provided.

As noted in the Office action, *Link* also describes that its asset viewership consolidator further matches virtual channel numbers with a published schedule database to determine program name information. (See *Id.* at 10:66-67, 11:11-20.) However, the virtual channel numbers and published schedule database processed by *Link's* asset viewership consolidator again correspond to audio/video content broadcast generally to all consumers served by a head-end, such as the head end 301, and not VOD content provided specifically to a first subscriber site, as recited in claim 1. Thus, the virtual channel numbers and published schedule database of *Link* also do not qualify as the recited server metering data because they neither identify VOD content provided specifically to a first subscriber site nor identify the first subscriber site to which the VOD content was provided.

The Office action further notes that *Link's* TPAS includes an STB ID database storing set-top box (STB) identifiers (IDs). However, *Link's* STB ID database is processed by its STB clustering server 208 to group STB IDs according to cluster codes into demographic segments. (See *Id.* at 8:28-46.) *Link* does not describe or suggest using the STB IDs stored in its STB ID database to combine any subscriber metering data determined for a specific first subscriber site with server metering data determined for that same first subscriber site, as recited in claim 1. On the contrary, *Link* indicates that, due to its cluster code processing, "the possibility of tracking at the level of individual household may be lost." (See *Id.* at 10:12-19.)

For at least the foregoing reasons, although *Aras* mentions monitoring of VOD content and *Link* describes data combining, the combination of *Aras* and *Link* fails to teach or suggest

combining the recited subscriber metering data, which indicates whether VOD content was selected for presentation at a first subscriber site, with the recited server metering data, which identifies the selected VOD content provided by the VOD server specifically to the first subscriber site and also identifies the first subscriber site to which the selected VOD content was provided. Amended claim 1, therefore, defines a nonobvious advance over the art relied upon by the Office action. Accordingly, withdrawal of the rejections of claim 1 and all claims depending therefrom under 35 U.S.C. § 103(a) is respectfully requested.

Art Rejections: Claim 60

The Office action rejected independent claim 60 as being unpatentable over *Aras* in view of *Link* under 35 U.S.C. § 103(a). The applicants respectfully traverse this rejection.

Independent claim 60, as amended, recites an article of manufacture storing machine readable instructions that, when executed, cause a machine to, among other things, combine subscriber metering data and server metering data to monitor VOD content provided to a first subscriber site, the subscriber metering data indicating whether VOD content was selected for presentation at the first subscriber site but not identifying the VOD content, and the server metering data identifying the VOD content provided by a VOD server specifically to the first subscriber site and also identifying the first subscriber site.

The combination of *Aras* and *Link* fails to teach or suggest causing a machine to combine subscriber metering data and server metering data to monitor VOD content provided specifically to a first subscriber site. Furthermore, neither *Aras* nor *Link* teach or suggest combining subscriber metering data indicating whether VOD content was selected for presentation at the first subscriber site but not identifying the VOD content, with separate server metering data

identifying the VOD content and also identifying the first subscriber site to which the VOD content was provided.

Accordingly, amended claim 60 defines a nonobvious advance over the art relied upon by the Office action. Withdrawal of the rejections of claim 60 and all claims depending therefrom under 35 U.S.C. § 103(a) is respectfully requested.

Art Rejections: Claim 72

The Office action rejected independent claim 72 as being unpatentable over *Aras* in view of *Link* under 35 U.S.C. § 103(a). The applicants respectfully traverse this rejection.

Independent claim 72, as amended, recites a system comprising a central facility to combine subscriber metering data and server metering data by replacing first metering data included in the subscriber metering data with the second metering data included in the server metering data to monitor VOD content provided specifically to a first subscriber site, the first metering data included in the subscriber metering data indicating that VOD content was selected for presentation at the first subscriber site but not identifying the VOD content, and the second metering data included in the server metering data identifying the VOD content provided by a VOD server specifically to the first subscriber site and also identifying the first subscriber site.

Claim 72 is patentable because the combination of *Aras* and *Link* fails to teach or suggest a central facility to combine subscriber metering data and server metering data to monitor VOD content provided specifically to a first subscriber site. Additionally, claim 72 is patentable because neither *Aras* nor *Link* teach or suggest determining subscriber metering data that includes first metering data indicating whether the VOD content was selected for presentation at the first subscriber site but not identifying the selected VOD content. Furthermore, *Aras* and *Link* fail to teach or suggest replacing first metering data included in the subscriber metering data

with second metering data included in the server metering data, with the first metering data indicating whether the VOD content was selected for presentation at the first subscriber site but not identifying the selected VOD content.

Accordingly, amended claim 72 defines a nonobvious advance over the art relied upon by the Office action. Withdrawal of the rejections of claim 72 and all claims depending therefrom under 35 U.S.C. § 103(a) is respectfully requested.

Obviousness-Type Double Patenting

The Office action rejected claim 1 provisionally on the ground of nonstatutory obviousness-type double patenting in view of claim 1 of U.S. Application Serial No. 11/550,261 ("the copending '261 application"). In light of the amendments made herein to claim 1 of the instant application, and the amendments made to claim 1 of the copending '261 application in a response filed on July 16, 2009, it is respectfully submitted that these claims are patentably distinct. Accordingly, withdrawal of the provisional double-patenting rejection of claim 1 is respectfully requested. However, if the provisional double patenting rejection is not withdrawn, the applicants respectfully request that the double patenting rejection be held in abeyance until agreement on the scope of any allowable claims is reached.

Information Disclosure Statement

The Examiner is respectfully requested to consider the references cited in the information disclosure statement previously filed on July 7, 2009, and to return a signed copy of this information disclosure statement with the next Office communication.

Further Remarks

In general, the Office action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the applicants will not address such statements at the present time. However, the applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

The Commissioner is hereby authorized to charge any deficiency or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17 or under other applicable rules (except payment of issue fees) to Deposit Account No. 50-2455.

Respectfully submitted,

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